

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRIN LAPINE,

Plaintiff,

v.

CITY OF DETROIT, COUNTY
OF WAYNE, WAYNE COUNTY
PROSECUTOR OFFICE, DR.
HUQ, DR. MYLES, DR.
PATSAIS, RN DURAM, RN
LONG, RN GRAHAM, D.
JONES, DEPT. DEGASRIAPO,
CORP. DYER, CORP. DICKSEN,
CORP. BORDEAU, DEREK
EMME, WELLPATH, BENNY
NAPOLEON, and JANE AND
JOHN DOES,

Defendants.

Case No.: 19-13165

David M. Lawson
United States District Judge

Curtis Ivy, Jr.
United States Magistrate Judge

ORDER REGARDING SUGGESTIONS OF DEATH (ECF Nos. 38, 39)

Plaintiff Darrin LaPine initiated this prisoner civil rights suit on October 28, 2019 without the assistance of counsel. (ECF No. 1). This case was referred to the undersigned for all pretrial matters on November 25, 2020. (ECF No. 22).

On March 30, 2021, defendants Duram, Graham, Long, and Wellpath filed suggestions of death for defendants Angelo Patsalis, M.D., and Richard Miles, M.D. (ECF Nos. 38, 39).

Pursuant to Federal Rule of Civil Procedure 25(a)(1), if a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. Rule 25(a)(1) permits a motion for substitution to be made “within 90 days after service of a statement noting the death[.]” The Rule further provides that if such a motion is not timely filed “the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). “Two steps are required for the 90-day period to commence. First, the suggestion of death must be made upon the record.” *Jones v. Leiter*, 2019 WL 2994499, at *1 (W.D. Mich. July 9, 2019) (quoting *Jenkins v. Macatawa Bank Corp.*, No. 103-CV-321, 2007 WL 737746, at *1 (W.D. Mich. Mar. 7, 2007)). “Second, the suggestion of death must be served upon the other parties and the deceased’s successor [and i]f the deceased’s successor is a non-party, then the suggestion of death must be served in accordance with Rule 4.” *Id.*

The Proof of Service provided with both suggestions of death indicates the suggestions were uploaded to the ECF system, which gives notification to the attorneys of record, and the suggestions were mailed by the United States Postal Service “to the involved non-participants.” (ECF Nos. 38, PageID.232; ECF No. 39, PageID.241). There is no indication either suggestion of death was served on the decedents’ successors. Consequently, the 90-day period for a motion to substitute or to dismiss the decedents has not yet commenced.

The defendants are **ORDERED** to serve the suggestions of death upon the decedents' successors in accordance with Fed. R. Civ. P. 4 and 25 **within 10 days** of this Order. They must then file with the Court a certificate of service indicating proper service on the successors for both decedents has been achieved.

IT IS SO ORDERED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within 14 days of service as provided for in Federal Rule of Civil Procedure 72(a) and Local Rule 72.1(d).

Date: April 2, 2021

s/Curtis Ivy, Jr.
Curtis Ivy, Jr.
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 2, 2021, by electronic means and/or ordinary mail.

s/Kristen MacKay
Case Manager
(810) 341-7850